

Un 35Chi
3.c 44
v3/1
Copy 1



CHILDREN'S LAW REPORT

Vol. 3 No. 1

March 1998

April is Child Abuse Prevention Month

Prevention organizations throughout the United States will observe April as Child Abuse Prevention Month. Since 1983 individuals and organizations have joined together during this month to raise the public's awareness of child abuse and its prevention.

The South Carolina statewide kick-off will be held in Columbia on April 1 with the Blue Ribbon Luncheon to be held at noon at the Capital Senior Center. Additional kick-off events will be held throughout the state.

Throughout the country statewide blue ribbon campaigns will emphasize the role that each individual has in preventing child abuse and neglect and encourage individuals to become involved in activities in their own communities. Many communities are setting aside time in their churches, synagogues, schools, businesses and government agencies to highlight the need for improved prevention strategies.

Michael Bolton, Honorary Chair of The National Committee to Prevent Child Abuse states, "I believe that each of us must recognize the important role that we can play as individuals in our own community."

FOR MORE INFORMATION CONTACT:

Sandra Friedner
Prevent Child Abuse, South Carolina
(Formerly The Council on Child Abuse and Neglect)
1800 Main Street, Suite 3-A
Columbia, SC 29201
(803) 733-5430

In this issue..

<i>April is Child Abuse Prevention Month</i>	<i>1</i>
<i>Child Abuse and Neglect Legislation</i>	<i>4</i>
<i>Guardian ad Litem's Role in Child Protective Services Actions</i>	<i>5</i>
<i>Children as Witnesses</i>	<i>6</i>
<i>New Resource Attorney</i>	<i>7</i>
<i>Training</i>	<i>8</i>

FACTS ABOUT CHILD ABUSE AND NEGLECT

Nationwide

⇒In 1995, 3,111,000 children were reported to child protective service (CPS) agencies as abused and/or neglected; after investigation, 996,000 children were found to have been abused and/or neglected.

⇒Of the substantiated cases, 50% were neglect, 25% were physical abuse, 11% sexual abuse, 3% emotional maltreatment, and 6% were other forms of maltreatment.

⇒In 1995, an estimated 1,215 child abuse and neglect related fatalities were confirmed by CPS agencies, an average of three children a day.

In South Carolina

⇒21,211 cases of child abuse and neglect were reported in South Carolina in 1996, involving 48,034 children (*SC DSS Central Registry*).

⇒38% of those reports involved *physical neglect*; 23% involved *physical abuse*; 21% involved *threat of harm*; 8% involved *sexual abuse*; 5% involved *medical neglect*; 5% involved *mental injury*; and 2% involved *emotional neglect*.

⇒55% of the reports were made by mandated reporters (educators and child care providers, medical, social services, and legal professionals); 35% were made by people close to the family, including victims and perpetrators; 10% of the reports were made anonymously.

⇒8,230 children were placed in foster care in 1996; 82% of those placements were the result of abuse, neglect or abandonment. Approximately 12% of these children were in permanent foster care.

Sources: National Committee To Prevent Child Abuse
Prevention of Child Abuse, Virginia
South Carolina Department of Social Services Central Registry

COUNCIL ON CHILD ABUSE & NEGLECT
1800 Main Street ♦ Suite 3A ♦ Columbia SC 29201
1 - 800 - SC Cares ♦ (803) 733-5430

Why Child Abuse Happens:

- Lack of parenting knowledge.
- A child with disabilities, special needs, or perceived as "different" is at higher risk.
- Families are socially isolated.
- A major crisis or series of crises.
- Parents are immature or have unmet emotional needs.
- Parents who were abused as children and did not receive help are at risk of becoming abusive parents.

How Does Child Abuse Impact Society?

- Childhood histories of abuse and neglect are commonly reported by many adult criminals, juvenile delinquents, teenage drug abusers, and prostitutes.
- Adults who have experienced abuse often find it difficult to develop or maintain close relationships; experience overwhelming or unmanageable feelings of sadness, fear and anger; depend on alcohol, drugs, or food to cover feelings of humiliation, shame, and low self-esteem; and experience physical ailments, sexual problems and other signs of trauma.
- Adults who have been abused may find it difficult to parent effectively, maintain employment, or build healthy interpersonal relationships.

What Are The Costs?

- It is estimated that for every \$3 spent on prevention, we save at least \$6 that might have been spent on child welfare services, special education services, medical care, foster care, counseling, and housing juvenile offenders.
- When children are not allowed to grow up into healthy functioning adults, society experiences a tremendous loss in human potential.

Can Abuse Be Prevented?

Studies indicate that the cycle of abuse can be stopped through family education and support programs. Programs that provide support, information and early interventions are the best ways to help abusive parents and families at risk of abuse.

For more information on prevention programs in your area, and how you can become involved, contact:

In The Midlands:

The Council on Child Abuse & Neglect
(803) 733-5430 ♦ 1-800-SC CARES

In The Piedmont:

The Piedmont Council For Prevention of Child Abuse
(864) 467-3591 ♦ 1-800-917-KIDS

In The Low Country:

The Exchange Club Center For Prevention of Child Abuse
(803) 747-1339

In The Pee Dee:

Pee Dee Coalition Against Domestic and Sexual Assault
(803) 669-4600 ♦ 1-800-273-1820

Child Abuse and Neglect Legislation

House Bill 4468 contains numerous amendments to various statutes relating to abuse and neglect of children. Senate Bill 998 is the companion bill. This bill would amend the following statutes to provide that:

- ▶ §19-1-180 an out-of-court statement can be admitted as evidence under Title 20 if the child is under the age of twelve or functions cognitively, adaptively, or developmentally under the age of twelve.
- ▶ §20-7-510(A) mandatory reporters must report suspected abuse by someone other than the parent, guardian or other person responsible to law enforcement.
- ▶ amends §20-7-410(D) to protect the confidentiality of the reporter's identity in law enforcement records.
- ▶ §20-7-540 good faith immunity granted to a mandatory reporter includes the investigation period.
- ▶ §20-7-545 good faith immunity extended to persons contracted to convene family group conferences.
- ▶ §20-7-610(2) continues the probable cause hearing if relative placement has been agreed to and the relatives need up to five days to make arrangements to care for the child.
- ▶ §20-7-610(M) merits hearing can only be continued under exceptional circumstances and the hearing must be completed within sixty-five days following receipt of the removal petition.
- ▶ adds §20-7-650(C) the social services agency is required to investigate reports of child abuse and neglect when a child dies only if there are other children in the home or the subject of the report is the parent, guardian or person responsible for the welfare of another child regardless of whether that child resides in the home.
- ▶ eliminates the provisions of 20-7-650(R) whereby a relative who has physical placement without custody can receive the same services along with financial benefits as are provided to licensed foster care placement and facilities.

- ▶ amends §20-7-690 to require that a child victim be 14 years or older, rather than 10, to have access to DSS records concerning his or her case.
- ▶ amends §20-7-690 to provide that the agency may disclose information to the participants in a family group conference to accomplish the goals of the family group conference.
- ▶ allows a foster child to continue in the same school even though placed outside the school district.
- ▶ adds an additional specific ground for termination of parental rights. Parental rights may be terminated if a parent is convicted of or pleads guilty or no lo contendere to a crime involving physical abuse of a child that resulted in death or hospitalization of that child.

House Bill 4445 contains several revisions to the child abuse and neglect statute as it relates to caseworkers monitoring foster care placements. The following statutes are amended:

- ▶ §20-7-764(B) DSS must consider evidence of domestic violence, sexual abuse, physical abuse or substance abuse by an adult living in the child's home when determining whether to inform the child's parent or guardian of the location of the child's placement.
- ▶ §20-7-767:
 - Monthly caseworker interviews with the foster parent may be by telephone rather than in person, so long as one interview per quarter is in person in the foster home.
 - Caseworker interviews with other adults in the foster home are to be conducted quarterly rather than monthly. If a new adult moves into the home, the foster parent must notify the caseworker and an interview of the adult must be conducted within one month. Interviews of all adults in the home are not required when the child is in a group home.
 - If a child is placed in another county, DSS may appoint a caseworker in that county to conduct the interviews.
 - Foster parents have a duty to facilitate the interviews, and non-cooperation can be a ground for revocation of their license.
 - Criminal liability for failure to report noncompliance with the interview is deleted;

however, upon motion of any interested party failure to comply can result in a contempt action in family court.

Guardian *ad Litem*'s Role in Child Protective Services Actions

Case Scenario

The South Carolina Department of Social Services files an action alleging child abuse and/or neglect of a minor child by the parents. A guardian *ad litem* for the minor child is appointed pursuant to §20-7-110(1). The guardian *ad litem* conducts an independent investigation and prepares a report to the family court. The South Carolina Department of Social Services later determines that there is insufficient evidence to make a finding of abuse and/or neglect. The agency files a Motion to Dismiss the action. The guardian *ad litem* vehemently disagrees with the agency's decision. The guardian *ad litem* attempts to present the issues regarding abuse and/or neglect at a full hearing on the merits for the minor child. The family court grants the agency's motion to dismiss and denies the guardian *ad litem* an opportunity to be heard on the allegations of abuse and/or neglect of the minor child.

Questions Regarding Guardian *ad Litem*'s Role

This scenario raises a couple of questions. Can the South Carolina Department of Social Services dismiss a child neglect action? What is the authority of the guardian *ad litem* in child abuse and neglect cases? Can the guardian *ad litem* insist on a hearing on the merits of a child abuse and neglect case when the social services agency moves to dismiss the action?

The South Carolina Department of Social Services has statutory authority under §20-7-480 to intervene to protect an abused or neglected child. The agency can petition the family court to remove an abused or neglected child from the parents and give custody to the agency where removal is necessary to protect the child. §20-7-736.

Guardians *ad litem* have statutory authority to participate in a child protective services action filed by DSS. Section 20-7-110 requires that a guardian *ad litem* be appointed for the minor child. The guardian *ad litem* has the duty to **protect and promote the best interests of the child until formally relieved of the responsibility by the family court.** §20-7-122. Once appointed, the guardian *ad litem* must receive "appropriate notice of all court hearings and proceedings regarding the child" and is authorized to "make recommendations concerning the child's welfare," and through counsel to "introduce, examine and cross-examine witnesses in any proceedings involving the child and **participate in the proceedings to any degree necessary to represent the child adequately.**" §20-7-124.

The family court has exclusive jurisdiction over actions involving children who have been abused or neglected. (See §§20-7-736 and 20-7-400). This jurisdiction continues so long as, in the judgement of the court, it may be necessary to retain jurisdiction. See §20-7-400(B).

The court of appeals did not rule on whether the guardian *ad litem* could be substituted as party-plaintiff. In South Carolina Department of Social Services v. Pritcher, 495 S.E.2d 242 (1997), *rehearing denied* (1998), the South Carolina Court of Appeals was asked to decide whether the family court may retain jurisdiction of a child protection case when DSS seeks dismissal, and whether the guardian *ad litem* may assume the role of plaintiff in the case. The family court had dismissed the action based on the agency's motion to dismiss, and had relieved the guardian *ad litem* of further duties and responsibility in the case.

The court of appeals upheld the appropriateness of the family court's dismissal. Underscoring the statutory purpose of limiting state intervention in family life to that which is necessary for protection of the child from abuse or neglect, the court held that the statute gives DSS primary authority to determine when court-ordered intervention is necessary. "Proceeding to trial on the basis of a petition which SCDSS has concluded is unfounded would violate the purposes and goals of the statutory scheme, which is to protect children while avoiding intervention into a family's life if at all possible." *Id.* at 245.

The court of appeals emphasized that the role of a guardian *ad litem* is to make recommendations to the family court on behalf of the child, and to facilitate the court's intervention on behalf of the child. However, it is the family court's prerogative to reject the recommendations of the guardian *ad litem*, as it had done in this case. The court of appeals held that the concerns about the child's environment expressed by the guardian *ad litem* did not rise to the level of neglect, and therefore the family court's rejection of the recommendation that jurisdiction be retained, whether with the guardian *ad litem* or some other person as plaintiff, was appropriate.

It is important to note that the court of appeals did not reject the appropriateness of the guardian *ad litem*'s contesting the motion to dismiss. Rather, it considered the arguments made by the guardian *ad litem* on their merits and held that they were not sufficient to make it an abuse of discretion for the family court to grant DSS's motion.

A sample Memorandum of Law Regarding the Guardian *ad Litem*'s ability to submit evidence in response to a Motion to Dismiss is available upon request from the Children's Law Project. This memorandum was prepared by Karolan Ohanesian, Attorney at Law.

CHILDREN AS WITNESSES

Reprinted with permission: *Update* Vol. 10, No. 8, 1997 (Newsletter of the American Prosecutor's Research Institute's National Center for Prosecution of Child Abuse)

Testifying in criminal cases is a difficult process for any witness. The stress of testifying is intensified when the witness is a child who is asked to discuss sexual acts committed by an adult the child loves. While many prosecutors have long observed that a child victim's participation in a criminal prosecution can have a positive effect on the child, a recent study supports these observations and provides useful recommendations for minimizing trauma to child witnesses.

In a study published in the August 1997 issue of the *Journal of Interpersonal Violence*, researcher Jim Henry surveyed 90 child victims of intrafamilial sexual abuse about their experiences with child protective

services, law enforcement, and the juvenile and criminal courts.¹ Henry reports the following important findings:

- Seventy-two percent of the children felt their involvement in the child protection system was more positive than negative.
- Eighty-three percent of the children stated they were glad they told and would tell again. Thirteen percent were not sure they would tell again and of the four percent who said they definitely would not disclose again, only one blamed the system for betraying her. The other children expressed concerns about family matters as the source of their hesitation about or decision not to disclose in the future.
- Children indicating they may or would not again report their own abuse nonetheless indicated they would advise an abused friend to tell an adult.
- Forty-one percent of children said they trusted a professional very much and 40 percent indicated they trusted a professional some.
- Children who developed a trusting relationship with at least one system professional experienced less trauma than those who did not develop a trusting relationship.

Henry's study demonstrates that professionals possess the power to influence the effect that system intervention has on child victims and reminds prosecutors of several important lessons.

First, prosecutors must recognize their vital role in earning and maintaining the child's trust. Instead of attempting to comfort children with promises that cannot be kept, prosecutors should speak candidly with children and prepare them for all possible outcomes and implications of the adjudication. Children are then prepared for the future instead of being left shocked and bewildered by an unforeseen turn

¹Jim Henry, *System Intervention Trauma to Child Sexual Abuse Victims Following Disclosure*, 12 J. Interpersonal Violence 499 (1997).

of events. As Henry states, "[w]ithout this preparation, it is likely that children will experience betrayal when painful and stressful events occur."²

Prior to trial, a prosecutor should show child witnesses the courtroom and allow them to sit in the witness box.³ Some children are too small to see over the witness box and if this is known in advance, a prosecutor can seek special accommodations for the child. If possible, introduce children to court reporters and other courtroom personnel they may see in the courtroom. Ask the court reporter to show your child witnesses how the stenographic machine works. Perhaps the court reporter can type the child's name and the name of any family pets and then give the child the sheet with this information. Show the child where the judge, jurors, and others will sit. If identification is not at issue, show the child where the perpetrator will sit. If your courtroom has microphones, ask the child to practice speaking into one. In this way, the child will not be surprised by the amplification of his voice in the courtroom.

Second, Henry's study provides additional support for the widely recognized benefits of the team approach to investigating and prosecuting child abuse. Henry concluded that the number of interviews with a child increased the level of trauma. With multidisciplinary teams and inter-agency cooperation trauma can be minimized by limiting interviews while at the same time maximizing information obtained from the child.

Third, professionals need to know how to communicate with children. Trust is directly related to communication and if professionals interviewing children do not treat them in an appropriate manner, trust will be lost. Henry concludes that a trusting relationship "may serve to mitigate the impact of previous betrayal and offer sexually abused children new opportunities to feel safe and secure, the necessary

building blocks for psychological and emotional recovery."⁴

Finally, Henry reminds prosecutors that the criminal prosecution itself is an important element in reducing trauma to children. Successful intervention by society vindicates children who have been abused and plays a role in children's healing. As Henry observes:

The necessity of disclosure, despite the aftermath of emotional pain, psychological stress, and personal loss, is undoubtedly evident from children's responses. This information provides system professionals with a mandate to develop interventions that encourage disclosure and the right to personal safety. It clearly demonstrates that the system is frequently successful in supporting victimized children following their disclosure.⁵

For other studies examining the effect of the court process on children, see Lucy Berliner & Jon R. Conte, *The Effects of Disclosure and Intervention on Sexually Abused Children*, 19 *Child Abuse & Neglect* 371 (1995) and Julie Lipovsky, *The Impact of Court on Children*, 9 *J. Interpersonal Violence* 238, 245 (1994).

New Resource Attorney

The Children's Law Project is pleased to announce the hiring of Charles Phipps as Resource Attorney. Charles is a graduate of the National Law Center at the George Washington University and has worked for the past five years as a staff attorney with the National Center for Prosecution of Child Abuse. His responsibilities include training, technical assistance and preparation of written resource materials related to prosecution of criminal child maltreatment cases. He will also provide technical assistance and support to selected jurisdictions in the development of interagency protocols and/or multidisciplinary teams for the investigation of child abuse. You can contact him at (803) 777-1979 or by E-mail: phipps@law.law.sc.edu.

²*Id.* at 509

³Whenever a prosecutor discusses with a child the facts of a case, a police officer or other professional should be present in the event the child reveals new information. In this way, a prosecutor can avoid becoming a witness in the case.

⁴Henry, note 1, at 509.

⁵*Id.* at 510-11.

Training

Multidisciplinary Approach to Child Sexual Abuse:
Investigation and Treatment

May 12-13, 1998
Piedmont Technical College
Greenwood, SC

Sponsored by:
Sexual Trauma and Counseling Center
and the
Children's Law Project

This seminar will provide an overview of child sexual abuse investigation, including child interviews, assessment of the non-offending parent, and medical evidence. It will be helpful to all professionals who work with sexual abuse cases, including law enforcement officers, child protection workers, guardians *ad litem*, victim advocates, therapists, and attorneys.

For more information call: (803) 777-1646 or (864) 227-1623.

Children's Law Project
University of South Carolina
Carolina Plaza, 12th Floor
Columbia, SC 29208

S. C. STATE LIBRARY

MAY 1 1998

STATE DOCUMENTS